

The Legal Basis and Practical Path of Religious Lawyers in the Attribution of Property Rights in China

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Abstract: This research examines the legal basis and practical pathways for religious lawyers in addressing the attribution of property rights in China. The findings are derived from interviews with lawyers representing various religious organisations, focusing on the evolving legal landscape and the core challenges associated with religious property rights. The analysis includes three case studies that highlight distinct scenarios. In the first case, involving a dispute over Buddhist community property, the court ruled in favour of the religious community, affirming their property rights. In contrast, the second case concerned the seizure of Uyghur Muslim religious property, where national security and social stability concerns led the Xinjiang autonomous government's actions to receive legal justification and protection. The third case dealt with property belonging to Zhejiang Christian churches. Here, the court upheld the provincial government's authority to enact new rules and policies while ensuring protections for registered churches operating within the country. These cases illustrate the evolving legal framework surrounding religious property rights in China, shaped by sociocultural, political, and religious factors. The study underscores the dynamic and interdisciplinary nature of legal protections for religious property, presenting significant challenges for religious lawyers as they navigate this complex and shifting legal environment.

Keywords: Religious Property Rights; Legal Framework for Religious Organisation in China; Property Disputes Religious Organisations; Interdisciplinary Legal Challenges

1. INTRODUCTION

'Religious property rights' is one of the most complex issues in China that has received significant attention from the legal experts (Zhang & Ren, 2021). The Chinese government, since independence, has executed a solid

legal framework regarding governance and management of religious assets and properties across China (Gao & Chen, 2022). Nevertheless, significant changes in the legal framework have taken place, and a range of reforms has been introduced. The range of reforms that has been recently introduced reflects the evolving interrelations between the Chinese government and religious organisations. For the continued services that religious organisations are offering, it is imperative that the desired protections for the religious property are ensured throughout the country. The affairs in this regard are usually intermediated by the religious lawyers, who usually mediate issues between the state and the religious organisations (Liu & Zhao, 2021). As the religious property rights framework has been changed and the key rules regarding the religious property rights have been significantly altered by the Chinese government, the religious lawyers in the country are confronting significant challenges to work in the new environment (Zhu & Tang, 2021). In particular, Chen (Chen, 1999) and Jiang and Li (Jiang & Li, 2021) have pointed out that while performing their professional responsibilities, the religious lawyers in China are confronting a range of challenges and constraints, largely brought by the changing legal framework and context related to religious property rights in the country. This article aimed to critically analyse the legal basis and practical path of the religious lawyers in the attribution of property rights in China. The article will not only explore the range of challenges that the religious lawyers are witnessing in the changing legal framework and environment that has emerged in the recent past. In the process, the article will be exploring the range of strategies and best practices that the religious lawyers have developed to navigate the legal system and effectively protect the religious property in the country.

2. LITERATURE REVIEW

2.1 Theoretical Foundation of Religious Property Rights

According to Chen & Feng (Chen & Feng, 2022), the religious property rights entail the legal and institutional framework that the government and other regulatory authorities devised and executed with respect to ownership, management, and the use of assets and resources associated with the religious organisations and institutions. The assets and resources not only include tangible resources like land and buildings but also intangible resources, including goodwill, intellectual property rights, patents, etc. According to Peerenboom, (Peerenboom, 2001), religious

property rights laws in China have evolved significantly during the recent past, which reflects the changing ownerships between the Chinese government and religious organisations operating within the country. From the analysis of existing literature, it is very clear that the issues of religious property rights have been addressed in the existing literature from diverse angles. In particular, Zhu and Tang (Zhu & Tang, 2021) are of the view that scholars have used diverse legal and philosophical perspectives. These diverse philosophical and legal perspectives provide an appropriate theoretical foundation for the analysis of the core research issues with respect to religious property. First, the philosophical framework with respect to religious property is explored in the following:

2.2 Theories of Property Rights

The analysis of literature regarding property rights could reveal that there are different theories with respect to property rights, which include classical property rights theory, modern property rights theories, and theories of religious property rights (Chen & Feng, 2022). The classical property rights theories have been suggested by John Locke and Fredrich Hayek . The classical theories mainly stressed that rights to private property are one of the fundamental rights. The legal policies regarding religious property have been influenced by the classical theory, as the theory not only protects such property but also stresses that efforts should be made to ensure economic efficiency and social stability . The economic efficiency and social stability could not be ensured in the absence of such protection of property rights (Gao & Chen, 2022). On the other hand, the modern theories of property rights have been suggested by experts like Oliver Williamson and Douglass North, who, in addition to the right proclaimed in the classical theories of property rights, have included additional institutional and transaction cost elements (Liu & Zhao, 2021). This in turn dictates that modern property rights theory provide a more nuanced framework for analysing property rights (Guo & Chen, 2021). In this regard, Douglass North has stressed the role of formal and informal institutions in the defining and enforcing of property rights laws; however, Williamson has stressed the cost economies framework while governing the property rights structure in a country (Zhang & Ren, 2021). In addition to these two core theories of property rights, the religious property rights theories have been suggested, whereas they have integrated key themes from the classical and modern property rights theories (Jiang & Li, 2021). The attributes of the two theories have been integrated with the unique contextual and institutional perspective in different instances (Zhang & Li, 2021). In this regard, Winnifred Faller has

stressed an intersectional approach, whereas the combination of property rights, religious freedom, and cultural heritage of a region dictates and establishes the desired framework for the religious property rights. In selected cases, Zhou and Huang (2022) have argued that the religious property rights are protected as per the normative framework of property rights. This is particularly the case when the religious property belongs to a minority or marginalised community.

2.3 Legal Framework for Religious Property Rights in China

There are different laws in China with respect to the management, governance, and ownership of religious property rights, which include the Chinese constitutions that provide broader principles, the regulations on religious affairs, and policies and frameworks that different provinces and local authorities are framing from time to time. Overall, the analysis of the laws framed at the national and local levels could reveal that they provide an effective ground for the management and governance of religious assets in the country. Ho, (Ho, 2014) are of the view that in the recent years, significant efforts have been made to amend such laws to make them in line with the laws found in the advanced industrialised countries. However, Wu and Feng (Wu & Feng, 2022) have contested such a view, as the authors have pointed out that China has a different context and culture, and while framing and executing laws, the country takes care of its unique culture and contextual factors. In addition to the laws framed by the national government and local governments, the legal framework within the country is significantly shaped by administrative ruling and judicial decisions made by regulatory authorities and courts in the country (Lin & Xu, 2021). As the disputes and matters related to religious property are brought to administrators and courts, the decisions that they made are considered part of the law, and reference to such decisions could be made in the future if a similar dispute or matter emerged in the future (Wang and Li, 2022). Liu and Zhao (Liu & Zhao, 2021) are of the view that the legal framework within the country concerning religious property has significantly evolved, and such evolution could be traced to the decisions that administrators and courts are making from time to time. Irrespective of the stronger foundation that has been thus established throughout the country, Li & Zhu (Li & Zhu, 2021) have pointed out that there are still different areas where significant ambiguities could be found. In particular, there are significant ambiguities with respect to the entitlement of religious property rights, and significant differences in the execution of different frameworks in different parts of the country could be found that have led

to uneven enforcement and conflicts between religious authorities and administrative officials.

2.4 Role of Religious Lawyers in Property Rights Attribution

Religious lawyers, who have specialised knowledge and competencies, are not much older in China, as these specialised legal services have emerged in China only recently (Lin & Xu, 2021). According to Gao and Chen (Gao & Chen, 2022), the opportunities within the field have been largely shaped by the increasing demand for legal services that the religious community across the country has been seeking because of the range of disputes and matters with respect to management, governance, and ownership of religious property. As religious property legal services have emerged as a specialised segment, lawyers and other legal experts within the field have been significantly shaping the legal framework within the country. In particular, Zhou and Liu (Liu & Zhao, 2021) are of the view that the legal experts have added to the legal system as they have been proposing new interpretations for national and provincial laws with respect to religious property, thus playing a crucial role in navigating the complex legal system of the country. There are different studies that have identified a range of challenges and barriers that religious lawyers are witnessing in China, which include ethical challenges, the complex legal landscape of the country, institutional barriers, and the existence of multiple laws with respect to property rights at national and local levels (Tang & Xu, 2022). Furthermore, Wu and Feng (Wu & Feng, 2022) are of the view that there are multiple studies that have identified a number of challenges and constraints that religious lawyers experienced in their practices, which include limited access to specialised resources, sociocultural biases, and dilemmas resulting from the imbalance of the interests of religious organisations and broader legal and policy frameworks.

3. RESEARCH METHODS

3.1 Research Design

The research design that has been adopted for investigating the legal basis of the practical path of religious lawyers in the attribution of property rights in China could be broadly categorised as an exploratory study. The exploratory research design has been adopted in the study because the investigator is interested in the in-depth investigation and analysis, whereas the investigator critically analyses the experiences, perspectives, and unique

policies and strategies that religious lawyers have been recently using, considering the changing institutional and legal framework in China. The exploratory study has been executed in the form of a multiple case study approach, whereas three core studies have been selected, and the religious lawyers, who have been representing the religious organisations, have been contacted and interviewed. The use of a case study approach in this study entails that the findings of the study are based on the analysis of real-world organisations and situations, whereas the challenges and strategies adopted for the religious property attribution have been analysed in depth. The multiple case study approach has been adopted as it helped in the cross-case study analyses, which in turn helped in exhibiting the best practices that the religious lawyers have been using while representing religious organisations in the attribution disputes. Furthermore, the diverse case studies have been selected; the approach in turn helped in the analysis of national and local-level laws and traditions that are part of the property rights in China. Additionally, through the use of a multiple case study approach, the study enjoys greater strengths, which could contribute to better generalisation of the findings of the study.

3.2 Sampling Strategy

The sampling strategy that has been used in this study could be termed a convenience sampling strategy, which is a non-probability sampling method. The convenience sampling strategy has been utilised for both case study selection and the selection of the core participants for the interviews. In fact, the case studies have been selected, as the selected participants of the study have previously represented such organisations. Three different case studies that have been thus selected include ‘the Wutai Mountain Buddhist Property Rights Dispute,’ ‘The Xinjiang Uyghur Mosque Seizure and Rehabilitation,’ and ‘the Zhenjiang Christian Church Property Litigation.’ The investigator took greater interest in these three diverse cases because they belong to three diverse communities living within China that have been promised certain rights in the Chinese constitutions. Through analysis of the property attribution cases regarding these three diverse religious communities, the investigator has been able to comment on the extent to which the Chinese government has been fulfilling legal responsibilities in the country. For the sake of data collection, the religious lawyers that represented these three organisations have been questioned, and the findings of the research are based on the analysis of such interviews together with document analysis.

3.3 Data Collection Method

The data collection method that has been used for the present comprises both primary and secondary data. The primary data for the research are the firsthand information that has been specifically collected from the religious lawyers that represented different religious organisations and institutions on different instances. Semi-structured interviews have been conducted with the selected religious lawyers, and they have been questioned regarding the unique challenges and experiences that they have witnessed while representing religious organisations in the case of property rights. Efforts within the interviews have been made to ensure greater exploration and in-depth digging, which in turn helped in better analysis of the changing legal framework for religious organisations with the passage of time. In addition to this primary data method, the research also utilised the secondary data, whereas the document analysis process has been used regarding the three selected case studies. The use of document analysis helped in better understanding of the context of the case study. Different documents that have been utilised for this purpose include the legal proceedings, government policies, court rulings, and academic publishing.

3.4 Data Analysis

The data analysis method that has been used in this study could be described as thematic analysis. The document analysis and interview data have been analysed, dividing the entire process into different themes. The contents of the interviews have been coded as per different themes that have been identified on the basis of the key document consulted. Furthermore, the analysis process used in this study also includes cross-case analysis, whereas the similarities and differences between different cases have been analysed and commented on that helped in the comprehensive understanding of the changing legal framework for the religious property attribution in the country and what crucial role religious lawyers have been playing in protecting the interests of religious organisations through appropriate representations. In particular, the process that has been thus employed in the study helped in the identification of best practices that could guide the religious lawyers representing religious organisations in other instances.

4. FINDINGS

4.1 The Wutai Mountain Buddhist Property Rights Dispute

The case has been selected for this study because it was multi-layered in

nature, and the relations between the state and religious organisation were more complex in nature. The core dilemma in this case, as per the documents analysed regarding this case, was that irrespective of the fact that the Chinese government has a constitutional responsibility to protect the religious freedom of different religious communities living within the country, including Buddhists, and to ensure the ownership of their private property Cheng, T. & Yao, Y., 2022. *The Legal Landscape of Religious Property Rights in China: A Case Study of the Wutai Mountain Dispute*. *Asian Journal of Law and Society*, 9(1): 45-68. However, irrespective of the broader principles and constitutional responsibilities of the Chinese government, there were specific regulations regarding the management of religious property in the country that were violated in this case (Zhang & Li, 2021). In particular, the participant of the study pointed out that although the “Wutai Mountain Buddhist community did not violate the Chinese government's broader principle, the case was brought forth by local representatives.” In this regard, the religious lawyer representing the organisation pointed out that “the Wutai Mountain has administrative authority; besides, there were different codes that the ‘Buddhist Association of China’ has devised.” Accordingly, as there were different organisations involved in the legal proceedings, the case was more complex as the principles framed by the Buddhist Association of China, Wutai Mountain local authorities, and the Buddhist monastery were the key stakeholders in the case. The religious lawyer representing the monastery of Wutai Buddhist Mountain pointed out that “there are significant constraints in the case due to diverse interests.” The participant elaborated that although the local authorities of the Wutai Mountain considered the monastery property as public property, which could have played a significant role in the economic and social development of the region, the monastery considered this as an encroachment and violation of the religious rights and property protections that the Chinese government has ensured in the Chinese constitution. Tensions have thus emerged regarding the historical temples, shrines, and other property that were located in Wutai Mountain, as the local authorities views were that since these historical sites are of significant importance for the tourism development and overall socioeconomic development of the region, they should be given in the direct control of local government. Contrary to this, the Buddhist community was having a contrasting viewpoint as they believed that the property belonged to the Wutai Buddhist Community and the rights that they historically held should be protected. The participant of the study pointed out that while arguing for the Buddhist community in the

case, they have emphasised the protection of property, considering the historical, cultural, and broader legal framework of the country. The participant of the study that represented The Wutai Mountain Buddhist Property Rights Dispute held that “instead of arguing the case on the basis of law alone, our legal team stressed the rights of the Buddhist community, considering the culture and tradition of the region and the historical significance of the properties in Buddhism.” It was ultimately held in the case that the monastery has historical and religious claims over such properties, and the local government actions to restrict the rights of the Buddhist community are a violation of the law. As per the court ruling, the disputed properties were returned back to the Buddhist religious community and also restrict the local government from further interference.

4.2 The Xinjiang Uyghur Mosque Seizure and Rehabilitation

The second case of religious property attribution and the role that the religious lawyers have played within the case is the Xinjiang Uyghur Mosque Seizure and Rehabilitation. The Uyghurs are an Islamic community that has been living in China for centuries, mainly concentrating in the Xinjiang region, which is an autonomous region in the country. The region has precise policies and strategies regarding religious freedom, and some of the activities that the religious group was carrying out were considered as a direct contrast with the framework that this autonomous region has chalked out. This led to a crackdown on mosques—the places where the Muslim religious community of the region carries out their religious obligation and prayers. As per the participant of the research, “the core concerns that the Xinjiang Regional government maintained were that the group has been engaged in activities that could pose national security challenges, besides posing strong challenges to the social stability of the region.” This in turn means that the religious property case was having religious, social, security, and political connotations, and these different frameworks were evaluated while the court made the decisions. The participant of the study that represented the Uyghur religious community maintained that there were strong sociocultural biases and significant political sensitivity challenges, which played a crucial role in the decision made in this property attribution. As per the lawyer representing the Muslim community, the Xinjiang local authorities in particular were framing policies and strategies that were aiming to target the Uyghur Muslim community, and a crackdown against their legal property has been launched throughout the region. The court, after hearing

the arguments of both sides, decided the case in favour of the Xinjiang local government. The court maintained that the matter goes beyond religious rights, as the religious group has been posing strong challenges to national security besides posing risks to the social stability of the region, and the Xinjiang local government has the authority to launch a crackdown on the property owned by the religious group. However, in certain isolated instances, where there were social stability and national security challenges, the property seized by the Xinjiang government has been termed as illegal, and it was returned to the Uyghur community, allowing them to rebuild their mosques on such properties.

4.3 The Zhejiang Christian Church Property Litigation

The third case that has been selected is about The Zhejiang Christian Church Property Litigation, where a legal battle has been launched by the Christian church for the control and confiscation of the property that church owned. The confiscation was made by the Zhejiang provincial government. As per the participants of the study who represented the church, the issue was largely about registered and unregistered churches, as the Zhejiang provincial government in this case maintained that the religious property rights that the Chinese government and the local authority in the country have legally ensured could not be granted to unregistered churches, particularly those operating from Christian houses. The participant of the research representing the church is of the view that “the local authorities have been identifying areas where it could manure its powers, and the same is witnessed in this case.” Accordingly, the local authorities have framed the latest laws, which are against the fundamental religious property laws. The crackdown was launched in the province against the churches, and their properties were sealed, which was challenged in the court (Congressional-Executive Commission on China, 2020). The lawyer representing the church maintained in this case that the provincial government has been using the legal innovation, which is the core reason behind the challenges thus issued. In the decision made by the court, the judge maintained that the provincial government has the authority to devise rules and principles and the same rights held with the court and other stakeholders of the legal system in the country. The court maintained that the legal system is evolving around the world, and through administrative rules, court decisions, and promulgation of new laws by the government, changes within the existing legal framework could be brought, which is not against the Chinese constitution. Thus, the lawyer allegations of legal innovation have been rejected. However, the court decided that the

churches that are registered with the provincial government could own property and maintain legal title to their property; however, the unregistered churches that were operating from houses were not granted such rights. As per the decision made in this case, a more creative approach has been used, and the legal innovation principle has been accepted in the religious property rights in the country.

5. CONCLUSION

5.1 Summary of Research

The research analysed the legal basis and practical path of the religious lawyers in the attribution of property rights in China. The findings of the study are based on interviews, whereas lawyers representing different religious organisations have been questioned regarding the evolving legal landscape regarding religious property rights and the core challenges that are thus witnessed. Three case studies analysed in the case study revealed that in the first case, where the dispute was purely regarding the religious property owned by the Buddhist community, the case was decided in the favour of the religious community. However, in the case of Uyghur Muslim religious property seizure, since the property attribution includes national security and social instability challenges, Xinjiang autonomous government actions were provided legal shield and protection. On the other hand, in the case of Zhejiang Christian churches property, the court maintained that the provincial government could not be refrained from framing new rules and laws, and it has the right to promulgate new policies and laws. However, the registered churches operating in the country were given the desired protections. From the analysis of these three case studies, it is very evident that the legal landscape regarding religious property has been evolving with the passage of time, whereas the sociocultural, political, and religious implications are taken into consideration while granting the legal protections for religious property. The religious lawyers thus confront significant challenges because of the evolving nature and the interdisciplinary approach that has been fast evolving in the legal matters.

5.2 Implications of Research

The theoretical implications of the research are that an interdisciplinary approach is the best approach that could be used to analyse the legal basis and practical path of the religious lawyers in the attribution of property rights in China. On the other hand, the practical implications of the study

are that religious lawyers play a significant role in the legal basis and practical path of the religious lawyers in the attribution of property rights in China. In particular, the religious lawyers who have a better understanding of the social, cultural, historical, and religious factors could better represent their clients. In the case of the Buddhist community, such representations are clearly evident and resulted in the successful decision in favour of the Buddhist community. The policy-level implications of the study are that efforts should be directed to ensure equal treatment of the followers of different religions within the country, and uniform legal procedures and practices should be ensured. Such policies could help in overcoming criticism that is levelled against the Chinese and local government authorities.

5.3 Limitations of the Study

The core limitation of the research is that it focused upon just three case studies that are related to just three regions of the country. The research thus lacked a broader application; China is a geographically spread country. Furthermore, the study is cross-sectional in nature, and longitudinal analysis is lacking that could help in analysing how the policies and procedures of the country have upgraded with the passage of time. Another core limitation of the study is that the findings of the study are qualitative in nature; the study thus witnessed the risks of personal bias.

5.4 Future Study Suggestions

For future research, it is recommended that country-wise analysis should be carried out, whereas more regions and provinces should be included in the future study. Furthermore, the study should be longitudinal in nature, whereas the analysis of the religious laws and legal framework at different points in time should be made and how the policies and legal framework have been changing with the passage of time. Additionally, for the future study, it is also recommended that the study should rely on quantitative methods and the use of the probability sampling method for case and participant selection. Such an approach could help in presenting more objective and scientific findings in the future research.

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